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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/807,420

03/23/2004

Craig A. Barrile-Josephson

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

03/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/807,420	Applicant(s) BARRILE-JOSEPHSON ET AL.	
	Examiner MICHAEL G. MENDOZA	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-31 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) 25-27 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-10, 15, 18, -22, 28-31, and 34-36 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 16, 17, 23 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/5/2008 have been fully considered but they are not persuasive.
2. As stated in the prior office action mailed 9/9/2008, paragraph 13, lines 1-3, "Claims 4, 5, 12-18, 23, 24, and 32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and **any intervening claims**." Claims 12 and 33 depend on claims 11 and 32 respectively. The limitations of claims 11 and 32 have not been included into the independent claim. The incorporation of a "slider-crank mechanism" has not set forth any structural limitations. The prior art to Amano et al. meets the limitation of a "slider-crank" since the blade of Amano et al. is cranked by a motor that causes the blade to slide across a fixation ring.
3. Claims 1-10, 13-31, and 34-37 are pending. Claims 25-27 and 37 are withdrawn from consideration.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 6-10 19-21, 28, 29, 31, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Amano et al. 6277134.

Art Unit: 3734

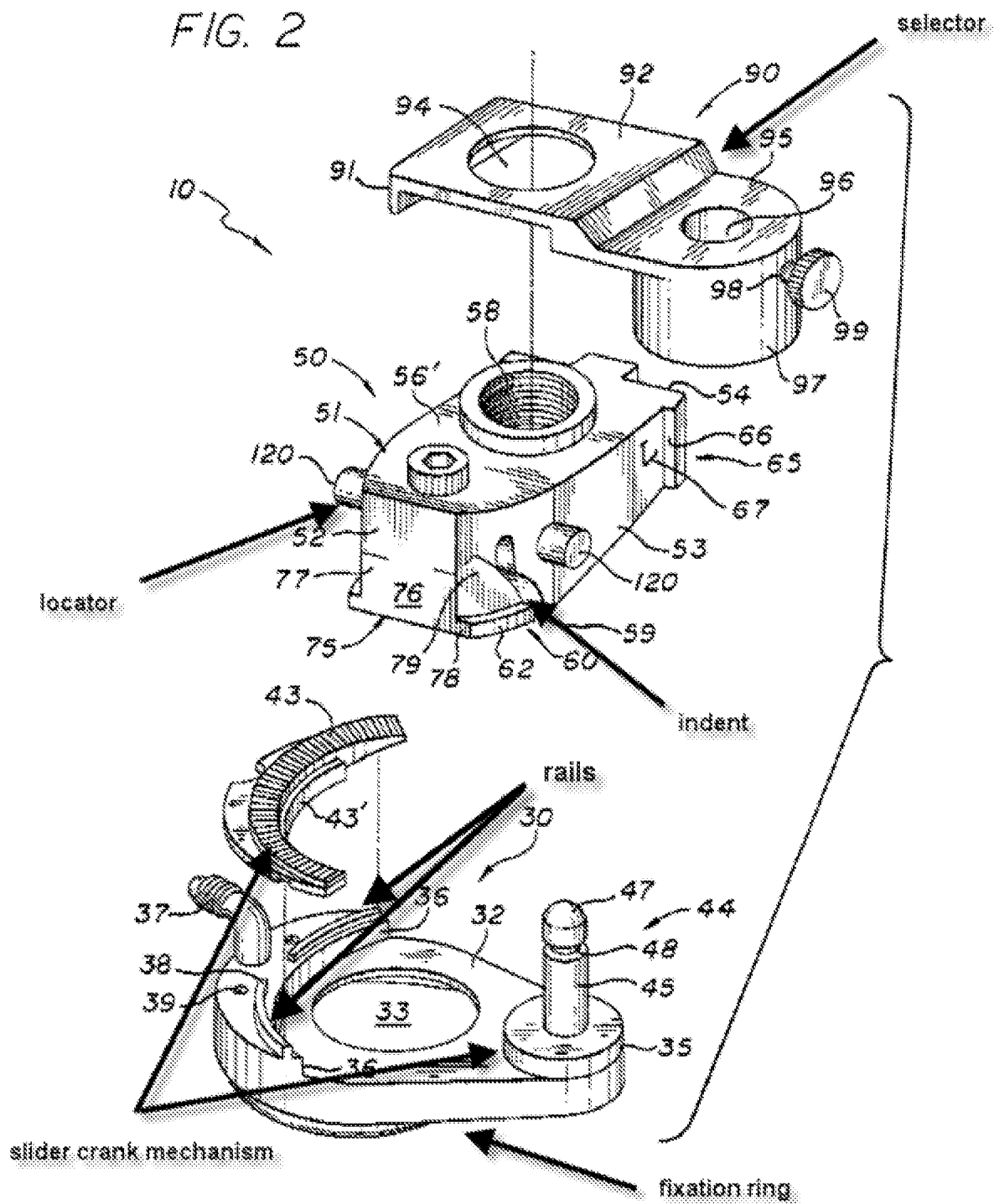
6. Amano et al. teaches a microkeratome for use in ophthalmic surgery comprising: a slider-crank mechanism; a cutting-head; a fixation ring; wherein the slider-crank mechanism moves the cutting-head at least partially across the fixation ring; a controller (61); wherein the drive includes a left/right selector that is alternately moveable between a start position of the drive for a patient's left eye and a start position for a patient's right eye (col. 6, lines 13-17); resilient spring-like arms (62); a cutting-head locator; a translation stop (50); a motor (21); a passage from a bottom surface of the ring and with the ring for connection to a vacuum source (61); wherein the fixation ring includes structure extending beyond a bottom-most part of an annular ring and raised about the bottom-most part of the annular ring (see fig. 1b).

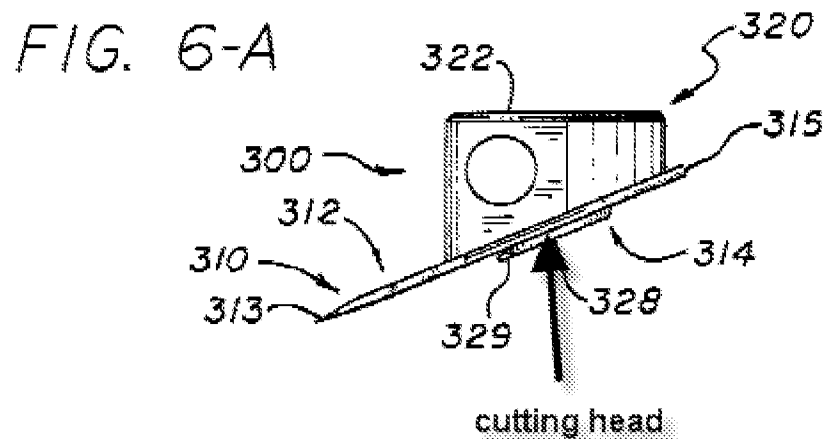
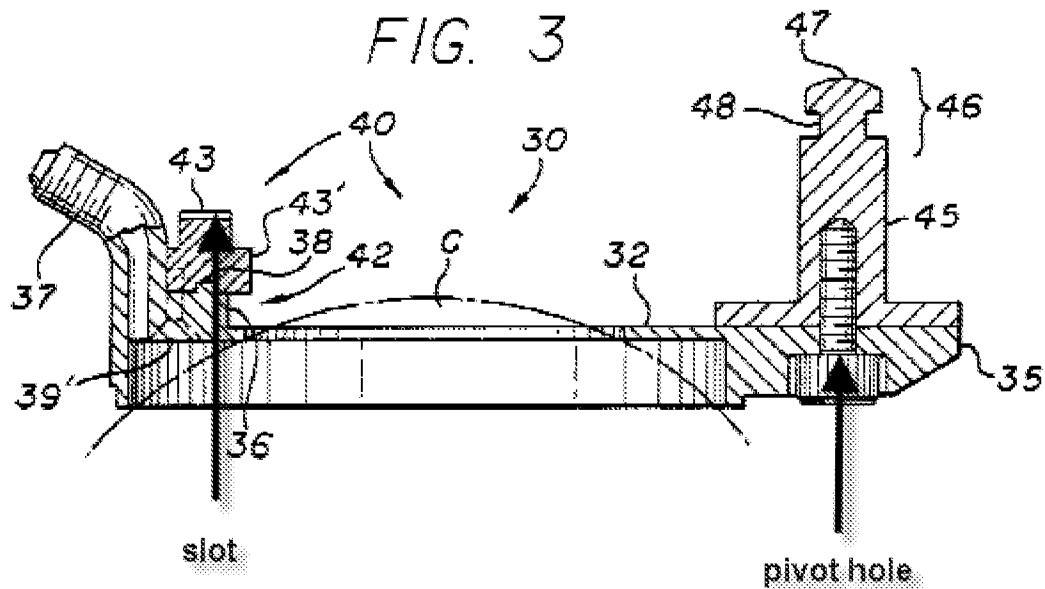
7. Claims 1,2, 6-8, 10, 13-15, 18-21, 28, 29, 31, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Hellenkamp et al. 6051009.

8. Hellenkamp et al. teaches a microkeratome for use in ophthalmic surgery comprising: a slider-crank mechanism (motor cranks gears to slide blade); a cutting-head; a fixation ring; wherein the slider-crank mechanism moves the cutting-head at least partially across the fixation ring; a controller (200); wherein the drive includes a left/right selector that is alternately moveable between a start position of the drive for a patient's left eye and a start position for a patient's right eye (see figs. 10a-10b); a cutting-head locator including indents; a translation stop (65); a motor (100); a passage from a bottom surface of the ring and with the ring for connection to a vacuum source (col. 7, lines 1-18); wherein the fixation ring includes structure extending beyond a bottom-most part of an annular ring and raised about the bottom-most part of the

Art Unit: 3734

annular ring (see figs. 3-5); wherein the slider-crank mechanism includes a pivot hole and a slot formed on the fixation ring (between each tooth of track 43 there is a slot); wherein the pivot hole and the slot are generally on opposite sides of the ring; wherein the pivot hole and the slot cause the cutting head to move in an arcuate path (see figs. 10a-10b); wherein the slider-crank mechanism includes at least two slot formed on the fixation ring and a pair of rails.





Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3734

10. Claims 3 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amano et al. or Hellenkamp et al.

11. Both Amano et al. and Hellenkamp teach the microkeratome of claim 1. It should be noted that Amano et al. fails to teach a snap-on connector. Amano et al. teaches the use of thumb screws (23) as connectors. Hellenkamp et al. teaches the use of a threaded connection. However, it is well known in the art of connectors to use snaps as an alternative to screws or threaded connectors as a means for quickly connecting and disconnecting parts. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use snaps as opposed to screws for quickly connecting/disconnecting parts.

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amano et al. in view of Schwind 5779723.

13. Amano et al. teaches the microkeratome of claim 1. It should be noted that Amano et al. fails to teach a second motor for oscillating a blade.

14. Schwind teaches a microkeratome that includes a first motor for driving and a second motor for oscillating a blade (col. 2, lines 29-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Amano et al. in view of Schwind to include a second motor for oscillating for easier cutting.

15. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenkamp et al. in view of Farris et al. 6514266.

Art Unit: 3734

16. Hellenkamp et al. teach the microkeratome of claim 1. It should be noted that Hellenkamp et al. fails to teach a first motor for automatically driving the cutting head assembly and a second motor for oscillation a blade assembly with the cutting head assembly. Hellenkamp et al. teaches the use of one motor for driving and oscillation.

17. Farris et al. teaches a device with common first and second motors. Farris et al. teaches the use of a single motor for both driving and oscillation. However, Farris et al. also teaches the use of a first motor for driving and a second motor for oscillation as an alternative (col. 2, lines 40-51). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use two motors; one for driving and one for oscillating, in view of Farris et al. as opposed the one motor for both functions as taught by Hellenkamp et al.

Allowable Subject Matter

18. Claims 4, 5, 16, 17, 23, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3734

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/807,420
Art Unit: 3734

Page 10

/M. G. M./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734